

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MOLDEX METRIC, INC.,

Plaintiff,

V.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY,

Defendants.

Civil No. 14-cv-01821-JNE/FLN

DECLARATION OF LAWRENCE B. FRIEDMAN

I, Lawrence B. Friedman, declare as follows:

1. I am an attorney admitted to practice in the State of New York and admitted to the Bar of this Court *pro hac vice* for the above-captioned lawsuit, and a member of the law firm of Cleary Gottlieb Steen & Hamilton LLP, counsel to Defendants 3M Company and 3M Innovative Products Company (collectively “3M”). I make this declaration in support of Defendants’ Reply Memorandum of Law in Further Support of Their Dismissal Motion.

2. In its Complaint, plaintiff Moldex Metric, Inc. (“Moldex”) asserts that the zero NRR for defendants’ Combat Arms product is “based upon an improper testing effort, not in compliance with proper procedures.” Compl. ¶ 29. In its Proposed Amended Complaint, submitted as Exhibit 18 to the Declaration of Kevin Conneely, Moldex alleges that 3M’s NRR calculation improperly failed to exclude the test results reported by two “outlier” subjects, identified as “GWG” and “TRS,” and that “had

GWG's and TRS's results been excluded, 3M would have had to report a NRR greater than zero. . . ." ECF Docket No. 37, Conneely Decl. Ex. 18 ¶¶ 31-32.

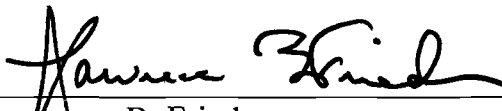
3. Attached hereto as Exhibit 1 is a true and correct copy of the test results underlying 3M's NRR for Combat Arms that Moldex submitted to the Court as page 2 of Exhibit A to Moldex's Proposed Amended Complaint, which has been modified solely to remove GWG's and TRS's test results and to reflect the calculation of revised mean sound attenuation values and standard deviations flowing from the remaining test results. They are highlighted at the bottom of Exhibit 1.

4. Attached hereto as Exhibit 2 is a true and correct representation of the formula for calculating an NRR, as set forth in the model shown at Figure 2 of 40 C.F.R. § 211.207, which has been modified solely to replace the regulation's sample test values with the test values reflected in Exhibit 1 hereto.

5. As shown in Exhibit 2, when the test values excluding GWG's and TRS's test results are included in the regulatory formula for calculating an NRR, the resulting NRR is -0.7.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of August, at New York, New York.



Lawrence B. Friedman